Act of 1934, after the coming into force of the Limitation Act 1939 the six years' period of limitation prescribed by section 2 was excluded by section 32. It also held that since proceedings were taken within six months of the letters of administration the action fell within section 1(3) of the Act 1934 and was therefore not barred.

The second condition was never in dispute in the case under appeal as the action was clearly taken within six months after the administratrix took out representation. However, the first condition was very much in dispute. But it was not in dispute in *Airey* v. *Airey*. Because the facts that the tortfeasor died on the day of the accident and that the cause of action also arose on the same day clearly show that the first condition was fulfilled. It does not appear to matter when the personal representative takes out representation so long as the action is taken within six months after representation to satisfy the period of limitation under the second condition. I can do no better than quote what Jenkin L.J. said about the first condition in *Airey* v. *Airey*:

"The *maximum* period of six months before death within which under paragraph (b) surviving torts must have been committed in order to be actionable at all after the death is not, we think, strictly a period of limitation. It is not a period within which action must be taken. It is an ambulatory restriction upon the injured party's right to prove against the estate of a deceased tortfeasor after his death, whenever he may die. In other words it imposes as a condition precedent to the maintainability of an action against the estate of a deceased tortfeasor the requirement that the tort should have been committed within six months of his death."

In the case under appeal the accident occurred on 22nd September, 1967 which was also the day the cause of action arose. The tortfeasor died as a result of a second accident on 27th June, 1968. That is nine months five days after the first accident. Therefore as the cause of action arose more than six months before the tortfeasor's death the respondent failed to satisfy the first condition. Consequently as his action does not fall within section 1(3) of the Act of 1934 it is not maintainable.

Appeal allowed.

HASSAN & ORS. v. AWANGKU SHAHBUDDIN

[O.C.J. (Rigby C.J. (Brunei), May 28, 1970]

[Brunei — Civil Suit No. 52 of 1969]

Damages — Assessment for — Injuries to arm and leg — Whether to be considered over-lapping or separate.

Damages — Leg — 2½" shortening — Compound fracture of right thigh.

Damages — Arm — Elbow — Compound fractured-dislocation of right elbow.

Negligence — Road accident — Momentary loss of power of concentration and control over vehicle.

The first plaintiff a marine workshop assistant aged 32 was involved in a road accident and suffered (a) compound fracture of the right thigh, (b) compound fractured-dislocation of the right elbow, and (c) fracture of the right humerus. He was hospitalised for two to three months and underwent three operations. His right leg was 2½' shorter. The movement of his right arm was severely restricted, and in the opinion of the surgeon "he could not function really effectively because of lack of manual dexterity in so far as his right arm is concerned and because of leg inequality in that he walks with a list to one side and he stands without his left knee being properly lodged." He claimed for general damages under two main headings (i) loss of amenities of life, together with compensation for the pain and suffering and shock he had sustained; and (ii) loss of prospective future earnings.

Held: (1) for the purpose of considering damages and compensation one must consider the joint effect of the injuries and the consequent loss of amenities of which the injured person had been deprived by the totality of those injuries;

(2) for shock, pain and suffering he had sustained and the loss of amenities he had suffered as a result of injuries to his right arm and right leg, general damages at $27,000 was assessed;

(3) for damages for loss of future earnings, one must consider the plaintiff's present salary on an incremental scale, in this case the plaintiff's prospective loss of earnings by reason of the injuries and incapacity he had suffered was assessed at $22,500.

Per Rigby C.J. (Brunei): "One knows, of course, that the defendant named in the statement of claim is not the true defendant in the action but that his name is only being used for the purpose of the action; the true defendant being the insurance company concerned. I can only say that it seems to me a remarkable way for an insurance company to carry on its legal business that it should merely give instructions to counsel to resist every issue of the claim but without any apparent instructions to counsel upon which to base and justify any defence put forward. It may be that there are some insurance companies who carry on their legal business in this manner, but one can only hope that they form a negligible and insignificant minority."

CIVIL SUIT.

K. E. Hilborne for the plaintiffs.

Y. F. Chee for the defendant.

Rigby C.J. (Brunei): Sometime between 9.45-10.00 on the evening of the 22nd August, 1969, the plaintiff Hassan bin Abdul Gani, was driving his Morris 1000 private saloon car along the Jalan Tutong Road from the direction of Brunei Town and going in the direction of Tutong. Sitting in the front seat with him was his 20 year old brother-in-law, the second plaintiff, and sitting alone in the back seat was his 4 year old son, the third plaintiff. They were all returning home from the cinema. They lived at Mile 8 on the Jalan Tutong Road. It was a fine night; the traffic was light and the plaintiff was travelling about 35 miles per hour. On approaching mile 7, the plaintiff saw two cars coming towards him, one behind the other and with dipped headlights. The cars passed each other. Shortly afterwards, the plaintiff saw another car come towards him with its headlights on and undipped. The car appeared to be zig-zagging. The plaintiff, although at the time driving on his nearside of the road, attempted to pull even further over on his nearside. The approaching car struck the front off-side of the plaintiff's car and the plaintiff knew no more until he awakened in hospital several hours later.

The police arrived at the scene shortly after the incident. They found the plaintiff's car lying in the ditch several feet off the road and facing in the opposite direction to which it had been travelling at the time of the accident i.e. facing towards Brunei. The bonnet was practically ripped off, the engine was buckled, the front bumper was dislodged, and the offside headlamp was off. The car was in fact a write-off.

The large Hillman saloon car which the defendant had admittedly been driving was facing diagonally across the road, on the opposite side of the road, its rear wheels resting on the grass verge and the badly damaged front part of the car was facing obliquely in the opposite direction from which the car had come i.e. facing towards Tutong. The distance between the two cars at their nearest point was about 35 feet 5 inches.

Police Inspector Haji Mohammad Salleh bin Haji Hassan, who arrived at the scene that same evening shortly after the accident had occurred, made a plan of the scene and took measurements. The plan is in evidence before me. Eleven photographs taken of the scene and showing the relevant position of the two cars immediately after the accident were also before me. The width of the road at the scene of the accident was 32 feet 2 inches; a perfectly straight level road at that place.

The off-side front tyre of the Hillman car was deflated. In about the centre of the road the inspector found some short scratch marks cutting into the surface of the road. The police inspector, who gave his evidence extremely well, said that as a result of his inspection he was of the opinion that some hard metal part underneath the chassis of the Hillman must have come into contact with, and caused the small fresh scratches he found on the surface of, the road. He further found a tyre mark starting on the off-side of the white line running along the centre of the road. That tyre mark was on the off-side of the road facing Brunei. As a result of his inspection, and having regard to the position of the Hillman car, the inspector was of the opinion that the tyre mark was caused by the off-side tyre of the Hillman car.

The defendant, a young man aged 23 gave evidence. He had spent the day down at a family party at Seria where he had gone with other members of the family to say farewell to a relative who was leaving Brunei to study overseas. At the time of the accident he was driving back to Brunei Town and following a car driven by his uncle. The car which he himself was driving contained six other occupants; his mother, who was sitting in the front seat beside him, and his brother and 4 sisters who were sitting in the back seat. His own version of the accident was that as he was driving along the road a car came round a right-hand bend towards him. The car came straight towards him with its headlights full on. The lights dazzled him. To quote his own words: —

"The light dazzled my eyes. I had to keep my car going straight — then the accident occurred."

There was some evidence given by the police officer that, coming from the direction of Brunei, there was a small uphill gradient culminating in a left-hand bend in the road before the road straightened out for some 100 yards or so to the point where the collision occurred.

The plaintiff himself said that his lights were dipped at the time. The plaintiff appeared to me to be a truthful witness and I think the probabilities are that his headlights were in fact dipped at the time of the actual collision. None of the passengers in the defendant's car gave evidence. The defendant's uncle, who was driving the car which the defendant was following, gave evidence, but his testimony is of no material assistance.

As I have said, I think the probabilities are that the plaintiff's headlights were in fact dipped at the time of the accident. But whether or not they were dipped, having regard to the testimony of the police officer as to the tyre mark found on the defendant's off-side of the road and over the white centre line, to the small scratch marks which the police officer found, and to the plaintiff's own testimony, I have no doubt whatsoever that the cause of the accident was solely due to the defendant's car being over the white line running down the middle of the road and, as a consequence, coming into collision with the off-side of the plaintiff's car which, I am satisfied, was being driven properly on its near-side of the road. I am satisfied that the accident was solely due to the defendant's negligent driving. Even assuming, which I think unlikely, that the plaintiff's headlights were undimmed and the defendant was dazzled by the approaching headlights, it was his clear duty in such circumstances to pull over to his own side of the road, if still dazzled by the headlights and stop and allow the other vehicle to pass. There can be no question of any contributory negligence. I think the probabilities are — although it must necessarily remain a matter of speculation — that the defendant was over-tired or over excited at the end of the day's festivities, or that his attention was distracted by one or more of the large number of passengers in his car, and that he momentarily lost his power of concentration and control over the vehicle whilst driving it.

At the conclusion of the plaintiff's case, I was informed that the damages in respect of the third plaintiff had been agreed at $1,000 and in respect of the second plaintiff at $250, subject to the agreement of the court. Both plaintiffs were infants and that settlement required the approval of the court.

Having regard to the relatively superficial injuries of both the second and third plaintiffs, I had no hesitation in approving the settlement.

It remains, therefore, only to consider the damages in respect of the plaintiff. The plaintiff is aged 32. At the time of the accident he was employed as a marine workshop assistant in the service of the Brunei Government earning $380 p.m. and on an incremental scale which would take him up to $620 p.m. assuming he passed an interim efficiency bar. On the evidence, I am wholly satisfied that there would appear to be no reasonable doubt that he would in fact have successfully passed that bar. His immediate superiors spoke well of him and regarded him as a very good engineer. On the night of the accident he was admitted into hospital in a bad state of shock and found to have: —

(1) Compound fracture of the right thigh;

(2) Compound fractured-dislocation of the right elbow; and

(3) Fracture of the right humerus.

He was detained in hospital between two to three months during the course of which he had three operations. Mr. Harris, the surgeon, said that he would have had a good deal of pain and suffering during that period and that he was agitated and disturbed for about two weeks. He would have been out of pain after about a month. The right leg is now 2¼ inches shorter than the left. He can walk, albeit somewhat unsteadily, without a stick, but he has a built-up shoe. The right knee movement is restricted slightly, both extension and flexion being 10° short of full movement. In an earlier report which Mr. Harris made on the 27th January — and the correctness of which he confirmed in the course of giving evidence before me — he wrote: —

"His right knee will probably regain full function, but the shortening of the leg will give a gross limp, partially compensatable by wearing a built-up shoe. To the extent that this shortening is not so compensated for, he will have a faulty posture and a liability to degenerative changes of his spine."

The movement of the plaintiff's right arm is severely restricted to the extent that he has no rotary movement at the elbow and the bending movement in the elbow is restricted to 30° instead of the normal 150°. Mr. Harris, when asked for the plaintiff's prospects on the labour market, said that he would look upon him — and I quote his actual words — "As a severely handicapped man — for an active normal job". He further said that the plaintiff's stiff right elbow would also handicap him as an efficient clerk since it would affect him both in writing and in using a typewriter.

The plaintiff is still employed by the Marine Department on the same salary and incremental scale as before but doing duty as a store-keeper and other light duties. It would seem clear beyond doubt that he could never go to sea as a marine engineer. At best, he could continue as an engineer in a shore-based workshop, but even there, in the opinion of Mr. Harris, he could not function really effectively because of lack of manual dexterity in so far as his right arm is concerned and because of leg inequality in that he walks with a list to one side and he stands without his left knee being properly lodged.

It is, I think, convenient to deal with the plaintiff's claim for general damages under two main headings: —

(1) Loss of amenities of life, together with compensation for the pain and suffering and shock he has sustained; and

(2) loss of prospective future earnings.

Under the first heading Mr. Hilborne, counsel for the plaintiff, submitted that the injuries to the right arm and to the right leg ought not to be considered as over-lapping injuries; on the contrary, he submitted that the one injury aggravated or accentuated the other and that for the purpose of considering damages and compensation the injuries sustained to each limb ought to be separately assessed, and that it would be wrong to deduct any part of their individual assessment for damages by a consideration of the damages as a whole. With respect, I do not agree. In my view one must consider the joint effect of the injuries and the consequent loss of the amenities of which the injured person has been deprived by the totality of those injuries. To consider each injury under a separate heading, together with the loss of amenities suffered as a result of that particular injury, might, I think, result in considerable over-lapping in adding up and estimating the damages and compensation in respect of each injury.

Both counsel have referred to a number of cases, both Malayan and English, which provide some guidance as to amounts assessed by the courts in respect of injuries such as the plaintiff has sustained. Doing the best I can and accepting the amounts assessed in those cases as a guide, I assess the plaintiff's general damages as $27,000 for the shock, pain and suffering he has sustained and the loss of amenities he has suffered as a result of the injuries to his right arm and right leg. If I was required to assess those damages separately, I would have done so on the basis of: —

(1) $750 — for shock, pain and suffering;

(2) $7,500 — for injury to the right arm; and

(3) $18,750 — for injury to the right leg.

Turning now to the claim for damages for loss of future earnings. As Mr. Hilborne has said, this is very much like "looking in the crystal ball". It must necessarily be very much a matter of speculation. At the time of the accident, the appellant was aged 32 and since the 1st April, 1969, he had been promoted to the position of marine workshop assistant with a commencing salary of $380 p.m. going up by annual increments of $20 p.m. to $480 p.m. and then, after passing an efficiency bar, up to $620 p.m. The plaintiff was highly regarded by his immediate superiors, and, as I have earlier said, I have no doubt he would have passed the efficiency bar. The normal retirement age for an employee, such as the plaintiff, in Government service is, I understand, 55 years of age. The plaintiff, although at present employed as a store-keeper and doing light work, is still being paid $380, but there can be no guarantee that he will continue to be retained in that job and paid that salary for that job. Mr. Hilborne has said that if it had not been for the injuries which he has sustained, the plaintiff, as a competent, although not academically qualified, engineer might at some future time have decided to leave Government service and obtain employment with some commercial firm in the rapidly expanding commercial community of Brunei and at a higher salary than he was paid in Government service. That, of course, is pure speculation. Mr. Hilborne has suggested that his loss of earnings should be calculated on a basis of $250 p.m. over a period of 15 years purchase, thereby reaching a figure of $100 per month over a period of 12 years purchase, making $14,400. Both of these figures are, of course, pure speculation. I think, however, that one must consider the plaintiff's present salary on an incremental scale, and of the two figures put forward Mr. Chee's seems to me to be the more realistic. Indulging in the same form of speculation as counsel before me and doing the best I can in the circumstances before me, on a rough basis of loss of earnings of $125 per month over 15 years, I assess the plaintiff's

prospective loss of earnings by reason of the injuries and incapacity he has suffered as $22,500.

Turning now to the claim for special damages. The plaintiff put the second-hand value of the 1964 Morris 1000 saloon car he was driving at the time of the accident as $3,000. He was not cross-examined on that matter. The car was a total write-off as a result of the accident. The plaintiff is entitled to recover this amount from the defendant.

The plaintiff has himself paid $750 to the Brunei General Hospital at the rate of $10 per day for the period he was in hospital from the 22nd August, 1969 to 4th November, 1969. He is entitled to recover this amount from the defendant.

In the result, there will be judgment for the plaintiff against the defendant for $3,750 as special damages and $49,500 as general damages.

General damages to the second plaintiff in the agreed sum of $250 and to the third plaintiff in the agreed sum of $1,000. The defendant must pay the cost of the action.

Before parting with this case, I would like to make this observation. When this case first came before me on Tuesday, 14th April, Mr. Chee, counsel for the defendant, asked for an adjournment saying that he had no proper instructions and had only been briefed for the case on the 10th April, the Friday preceding the hearing. The writ had been issued on the 20th November and the defence had been notified on the 10th March that the case was set down for hearing before me on the 14th April. In those circumstances and since the plaintiffs and their witnesses were already available to give evidence, I declined to grant an adjournment. I inquired from Mr. Chee what course he wished to pursue and whether or not there was any admission of any of the issues involved including, for example, the claim for $750 special damages for hospital expenses. Mr. Chee informed me that his only instruction was to contest liability on every issue. One knows, of course, that the defendant named in the statement of claim is not the true defendant in the action but that his name is only being used for the purpose of the action; the true defendant being the insurance company concerned. I can only say that it seems to me a remarkable way for an insurance company to carry on its legal business that it should merely give instructions to counsel to resist every issue of the claim but without any apparent instructions to counsel upon which to base and justify any defence put forward. It may be that there are some insurance companies who carry on their legal business in this manner, but one can only hope that they form a negligible and insignificant minority.

Judgment for the plantiffs.

Solicitors: *Hilborne, Goodbody & Co.; Ibrahim, Chee & Co.*

RE HERBERT VICTOR MORAIS

[O.C.J. (Raja Azlan Shah J.) June 10, 1970]

[Kuala Lumpur — Petition for Admission No. 10 of 1970]

Advocates and Solicitors — Admission — Shortening period of notice — Shortening period of reading in chambers — Academic attainment — Employment as law associate in American law firm — Whether practical knowledge and experience of American legal system an asset — Special grounds — Exercise of discretion — Advocates and Solicitors Ordinance, 1947, ss. 5(3), (5), 7(1) & 8.

The petitioner applied for admission and shortening of the period of notice of the application by two months and period of reading in chambers by one and a half months.

The petitioner obtained his Bachelor of Laws degree from the University of Singapore in 1966 and satisfactorily completed a post-graduate course of instruction organised by the University of Malaya. He took his Master of Laws degree at Harvard University in 1967, and won a scholarship to study for the degree of Doctor of Laws. While in the United States he was employed as a law associate by Messrs Ropes and Gray, the largest law firm in New England for a period of over three months. During his three months with the firm he had received instructions and gained experience in branches of the English common law, in particular contract and tort, constitutional law, drafting of pleadings, agreements and forms, professional practice and etiquette. His employer was highly impressed with his practical work. He returned in 1968 and was appointed lecturer at the Faculty of Law, University of Singapore for nearly two academic years, and had given instructions to law undergraduates preparing them for the practice of law in Malaysia and Singapore. He resigned in January 1970 and since February has been attending the office of Mr. D. L. Pickard, a practising advocate and solicitor of not less than 7 years standing.

The application was objected to by the Bar Council on the ground that the petitioner's short spell at an American law firm did not give him the practical knowledge and experience of law on the ground that the American law was different from the law practised in Malaysia. The Attorney-General and the Selangor Bar Committee did not object.

Held, admitting the petitioner: (1) in the light of the petitioner's excellent academic background it could not be said that he was without knowledge and experience;

(2) the American legal system possesses fundamentally the same social objectives as ours and a practical knowledge and experience of that system is an asset.

Per Curiam: It is the practice with our courts to refer to Commonwealth and American decisions in an attempt to see whether their legal systems have anything which we might usefully adopt ourselves and the only way to improve is by looking at other people's law so that the correctness of any one decision which we may arrive at can be confirmed.

PETITION FOR ADMISSION

S. D. K. Peddie for the petitioner.

K. A. Menon for the Bar Council.

Chin Yew Meng for the Attorney-General.

Raja Azlan Shah J. (delivering oral judgment): I am being asked to exercise my discretion to shorten the period of notice of the application for admission by two months and the period of reading in chambers by one and a half months. I am further asked to admit the petitioner as an advocate and solicitor of this honourable court here and now.

It is significant to note that neither the Peguam Negara nor the Selangor Bar Committee have objected